



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GRETHER
DIRECTOR

March 6, 2017

VIA UPS NEXT DAY AIR

Ms. Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2310A)
Washington, DC 20460

Dear Director Dorka:

SUBJECT: EPA File No.: 01R-94-R5
Response to Notice of Preliminary Findings of Noncompliance Under
40 C.F.R. § 7.115

This letter is in response to your correspondence dated January 19, 2017 (EPA Letter), regarding the above matter. This response has been prepared with the assistance of my legal counsel at the Michigan Attorney General's office and is submitted on behalf of the Michigan Department of Environmental Quality (MDEQ).

Your EPA Letter contains preliminary findings of noncompliance with 40 C.F.R. Part 7 on the part of the MDEQ. You state these preliminary findings by the United States Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO¹) are made pursuant to 40 C.F.R. § 7.115(c)(1)(i). Your letter also contains recommendations for achieving voluntary compliance regarding MDEQ's "public participation process." You state these recommendations are not made pursuant to 40 C.F.R. § 7.115(c)(1)(ii) and therefore this matter "is closed . . . and requires no further action." Finally, your letter also contains recommendations by EPA regarding "continuing community concerns related to the operation of the GPS [Genesee Power Station] facility." Importantly, your EPA Letter does not contain, pursuant to 40 C.F.R. § 7.115(c)(1)(iii), any notice to MDEQ of the right to engage in voluntary compliance negotiations to resolve the preliminary findings of noncompliance and recommendations stated in the EPA Letter.

It is necessary that I act with an abundance of caution given this very important matter. Accordingly, the preliminary findings and recommendations in your letter must be treated as being made pursuant to 40 C.F.R. § 7.115(c)(1)(i) and (ii). Therefore, what follows is an itemized response, pursuant to 40 C.F.R. § 7.115(d), to each preliminary finding and recommendation set out in your letter sufficient to demonstrate

¹ Formerly the Office of Civil Rights (OCR).

that certain preliminary findings are invalid and/or incorrect and that compliance may be achieved through steps other than those recommended in the EPA Letter. Also, given the January 19, 2017, EPA Letter was the first notice to MDEQ of EPA preliminary findings, I request you supply notice of MDEQ's right to engage in voluntary compliance negotiations pursuant to 40 C.F.R. § 7.115(c)(1)(iii). As I noted to you previously, please be aware that Governor Rick Snyder's Environmental Justice Workgroup, which the MDEQ sits on, is currently engaged in a comprehensive review of nondiscrimination policies and practices regarding Environmental Justice issues as applicable to all state agencies.

I. MDEQ Responses to EPA Preliminary Findings Regarding MDEQ's Nondiscrimination Program

EPA Overall Preliminary Findings:

"MDEQ's Nondiscrimination Policy does not mention or implement many of the foundational elements for a standard nondiscrimination program that EPA identified. Furthermore, EPA has not been able to find this information on MDEQ's website; nor has MDEQ provided EPA with any supplemental information to support its compliance with federal nondiscrimination law and EPA's nondiscrimination regulation. For example, EPA has been unable to determine how MDEQ ensures that all persons have equal access to MDEQ's public participation process, including persons with disabilities or who have limited-English proficiency. Given the paucity of documented information available, EPA is concerned that MDEQ does not have a non-discrimination program – on paper or in practice." [EPA Letter, p 25.]

MDEQ Response Overall:

These overall preliminary findings are not valid to the degree they allege noncompliance with items "that EPA identified" but are not required under 40 CFR Part 7. MDEQ has supplied EPA with extensive information supporting MDEQ's historical and current compliance with 40 C.F.R. Part 7 and federal nondiscrimination law. The materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, are hereby being resupplied. Also, MDEQ is currently drafting new policy and practice to further enhance nondiscrimination policy and procedures and availability of all MDEQ nondiscrimination information on MDEQ's website and elsewhere. A more detailed response by MDEQ to the entirety of EPA's preliminary findings and recommendations follows.

EPA Preliminary Finding 1:

"MDEQ's notice is deficient in a number of respects. The notice does not list the Federal nondiscrimination statutes to inform people about the statutes that protect them and on what bases complaints may be filed through MDEQ's grievance procedure. Instead, MDEQ refers people to other sources. Clear and complete notice to the public

and employees of conduct prohibited by the Federal nondiscrimination laws is required. [EPA Letter, p 25.]

MDEQ Response 1:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, MDEQ's nondiscrimination notice fully satisfies 40 C.F.R. § 7.95: "A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, age, or handicap in a program or activity receiving EPA assistance or, in programs or activities covered by section 13, on the basis of sex." There is no requirement under 40 C.F.R. § 7.95 that the text of MDEQ's nondiscrimination notice also "list the Federal nondiscrimination statutes to inform people about the statutes that protect them and on what bases complaints may be filed." MDEQ does supply clear and complete information to the public through the services supplied by MDEQ's Nondiscrimination Compliance Coordinator (NCC) and the materials available through the NCC. In addition, amendments to MDEQ's Nondiscrimination Policy 09-024 and Policy on Public Involvement 09-007 are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 2:

"MDEQ's notice is not prominently displayed on MDEQ's home page. Searching MDEQ's website using common sense search terms such as 'race,' 'Title VI,' 'discrimination,' and 'disability,' does not lead directly to the notice. According to EPA's review, MDEQ's notice currently only appears within the Non-discrimination Policy and Procedure in a location on MDEQ's website that people have difficulty accessing." [EPA Letter, p 26.]

MDEQ Response 2:

This preliminary finding contains some merit. MDEQ is currently drafting new policy and practice to further enhance nondiscrimination policy and procedures and availability of all MDEQ nondiscrimination information on MDEQ's website and elsewhere. As one example, amendments to MDEQ's Nondiscrimination Policy 09-024 and Policy on Public Involvement 09-007 for this purpose are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 3:

"Additionally, methods of notice must provide meaningful access to persons who are LEP [Limited English Proficiency] and accommodate persons with disabilities. MDEQ's notice, however, is English only with a note that those who are LEP can request such notice in a language or languages other than English. Although MDEQ's current notice states that it shall accommodate those with impaired vision or hearing, there is no evidence on MDEQ's website that these services are indeed available or how to access them." [EPA Letter, p 26.]

MDEQ Response 3:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, MDEQ's nondiscrimination notice fully satisfies 40 C.F.R. § 7.95: "A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, age, or handicap in a program or activity receiving EPA assistance or, in programs or activities covered by section 13, on the basis of sex." There is no requirement under 40 C.F.R. § 7.95 that the text of MDEQ's nondiscrimination notice includes an explanation of how MDEQ shall "provide meaningful access to persons who are LEP and accommodate persons with disabilities." Regarding MDEQ's nondiscrimination practices, MDEQ does "provide meaningful access to persons who are LEP and accommodate persons with disabilities" through MDEQ's existing permit issuance Public Comment and Public Hearing Process, services supplied by MDEQ's Nondiscrimination Compliance Coordinator (NCC), and the materials available through the NCC. In addition, other MDEQ policies and practices, including amendments to MDEQ's permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 4:

"Also, the notice states that the Nondiscrimination Compliance Coordinator [NCC] is the employee responsible for coordinating MDEQ's compliance with the Federal nondiscrimination statutes and EPA's implementing regulations, but does not specifically identify this person by name." [EPA Letter, p 26.]

MDEQ Response 4:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, MDEQ's nondiscrimination notice fully satisfies 40 C.F.R. § 7.95: "The notice must identify the responsible employee designated in accordance with § 7.85." Section 7.85 requires that MDEQ "shall designate at least one person to coordinate its efforts to comply with its obligations under this part." The MDEQ's nondiscrimination notice clearly states: "The DEQ Director has designated the Chief of the Office of Environmental Assistance as the Nondiscrimination Compliance Coordinator (NCC)." Moreover, MDEQ's Nondiscrimination Policy 09-024 states: "The Director of the DEQ designates the person holding the position of Chief of the Office of Environmental Assistance as the DEQ Nondiscrimination Compliance Coordinator (NCC) responsible to coordinate DEQ's efforts to comply with its obligations under 40 CFR Part 7." Finally, MDEQ's Nondiscrimination Policy 09-024 also supplies the direct email and street mailing address to contact MDEQ's NCC. In addition, amendments to MDEQ's Nondiscrimination Policy 09-024 (including to specifically name the person that is MDEQ's NCC) and Policy on Public Involvement 09-007 are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 5:

“However, the grievance procedure does not list the types of discrimination prohibited or the applicable Federal nondiscrimination statutes. Instead, MDEQ directs people to EPA’s Part 7 regulation to determine the type of discrimination (*e.g.*, race, national origin) that has occurred and is one that is redressed by MDEQ’s grievance process.” [EPA Letter, p 26.]

MDEQ Response 5:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, MDEQ’s grievance procedures fully satisfy 40 C.F.R. § 7.90: “Each recipient shall adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this part.” There is no requirement under 40 C.F.R. § 7.90 that the text of MDEQ’s grievance procedures also “list the types of discrimination prohibited or the applicable Federal nondiscrimination statutes.” MDEQ’s grievance procedures “assure the prompt and fair resolution of complaints which allege violation” of 40 C.F.R. Part 7 and, moreover, which allege violation of all applicable Federal nondiscrimination statutes. MDEQ accomplishes this through the services supplied by MDEQ’s Nondiscrimination Compliance Coordinator (NCC) and the materials available through the NCC. MDEQ also cites the materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ’s permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ’s response to EPA’s recommendations.

EPA Preliminary Finding 6:

“Providing adequate notice of these procedures and how to file complaints is critical to the proper functioning of MDEQ’s Nondiscrimination program. MDEQ has given no indication, either in its written response or during informal resolution discussions with EPA that it intends to do more to inform the public of the existence of the grievance procedure beyond posting in its buildings and in its current, difficult-to-find location on its website.” [EPA Letter, p 26.]

MDEQ Response 6:

This preliminary finding contains some merit. MDEQ is currently drafting new policy and practice to further enhance nondiscrimination policy and procedures and availability of all this information on MDEQ’s website and elsewhere. In addition, other MDEQ policies and practices, including amendments to MDEQ’s permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ’s response to EPA’s recommendations.

EPA Preliminary Finding 7:

“MDEQ’s Nondiscrimination Policy fails to contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly. To ensure individuals can invoke these grievance procedures without fear of reprisal, MDEQ’s Nondiscrimination Policy and grievance procedures should explicitly prohibit retaliation against any individual “for the purpose of interfering with any right or privilege guaranteed under the Acts or this part” or because that individual “has filed a complaint or has testified, assisted, or participated in any way in an investigation, proceeding or hearing” under this part or has opposed any practice made unlawful by this part.” Prohibited retaliatory acts include intimidation, threats, coercion, or discrimination against any such individual or group. MDEQ therefore should take steps to prevent any retaliation against those who file a complaint or who provide information regarding the complaint. At a minimum, MDEQ should ensure that complainants know how to report any potential retaliation.” [EPA Letter, pp 26-27.]

MDEQ Response 7:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ’s Nondiscrimination Policy and grievance procedures should “contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly” or should “explicitly prohibit retaliation against any individual ‘for the purpose of interfering with any right or privilege guaranteed under the Acts or this part’ or because that individual ‘has filed a complaint or has testified, assisted, or participated in any way in an investigation, proceeding or hearing’ under this part or has opposed any practice made unlawful by this part.”

It is correct that 40 C.F.R. § 7.100 states: “No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either: (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or (b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.” Of course, MDEQ policy and procedure prohibits retaliation *for any purpose against any person for taking any legal actions*, including pursuit of any action under 40 C.F.R. Part 7. Complainants, of course, can use MDEQ’s grievance procedures to any type of retaliation. However, again, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ’s Nondiscrimination Policy and grievance procedures contain express language regarding intimidation. In addition, other MDEQ policies and practices, including amendments to MDEQ’s permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ’s response to EPA’s recommendations.

EPA Preliminary Finding 8:

"MDEQ's Nondiscrimination Policy is also deficient in that it does not address the need to:

- (1) periodically assess the efficacy of MDEQ's efforts to maintain compliance with federal non-discrimination statutes;
- (2) conduct reviews of formal and informal discrimination complaints filed with the MDEQ in order to identify and address any patterns or systemic problems; or
- (3) ensure appropriate training for persons involved in informal resolution of discrimination complaints filed with MDEQ under federal non-discrimination statutes." [EPA Letter, p 27.]

MDEQ Response 8:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ's Nondiscrimination Policy and grievance procedures should "address the need to: (1) periodically assess the efficacy of MDEQ's efforts to maintain compliance with federal non-discrimination statutes; (2) conduct reviews of formal and informal discrimination complaints filed with the MDEQ in order to identify and address any patterns or systemic problems; or (3) ensure appropriate training for persons involved in informal resolution of discrimination complaints filed with MDEQ under federal non-discrimination statutes."

It is correct that 40 C.F.R. § 7.85 states: "Each recipient shall collect, maintain and on request of the OCR, provide . . . A brief description of any lawsuits[,] A log of discrimination complaints[,] Reports of any compliance reviews[, and] must conduct a self-evaluation of its administrative policies and practices," among other requirements stated in 40 C.F.R. § 7.85. However, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ's Nondiscrimination Policy and grievance procedures contain express language regarding these requirements under 40 C.F.R. § 7.85.

Of course, MDEQ policy and procedure will comply with all these requirements under 40 C.F.R. § 7.85. MDEQ Policy 09-024 already mandates that the NCC is "responsible to coordinate DEQ's efforts to comply with its obligations under 40 CFR, Part 7." Also, MDEQ Policy 09-024 already requires maintenance and full EPA-access to: (1) records on all lawsuits and all racial/ethnic, age, sex, and handicap data; (2) a discrimination complaints log; and (3) a compilation and 3-year retention of all records associated with discrimination claims. In addition, amendments to MDEQ's Nondiscrimination Policy 09-024 are discussed below in MDEQ's response to EPA's recommendations. MDEQ also cites the materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ's permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on

Public Involvement 09-007, are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 9:

"In addition, MDEQ's Nondiscrimination Policy and its grievance procedures fail to, among other things, discuss available informal resolution process(es) and the options for complainants to engage in those processes." [EPA Letter, p 27.]

MDEQ Response 9:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ's Nondiscrimination Policy and grievance procedures should "discuss available informal resolution process(es) and the options for complainants to engage in those processes." Moreover, MDEQ's Nondiscrimination Policy 09-024 already requires MDEQ's NCC to make "recommendations for resolution," which allows for discussion of how to engage informal resolution processes to resolve grievances and complaints. MDEQ also cites the materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ's permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 10:

"Moreover, it is unclear whether the other responsibilities of the Chief of the Office of Environmental Assistance would create a conflict of interest with those of the Nondiscrimination Compliance Coordinator [NCC], as they are currently envisioned to be the same person." [EPA Letter, p 27.]

MDEQ Response 10:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ's Nondiscrimination Policy and grievance procedures should include reference to any potential conflicts of interest. Conflicts of interest are, of course, improper and shall not be allowed under MDEQ's Nondiscrimination Policy and grievance procedures. MDEQ also cites the materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ's permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 11:

“MDEQ has given no indication, either in its written response or during informal resolution discussions with EPA, whether any training will be provided to the Nondiscrimination Compliance Coordinator or other MDEQ employees to help them understand MDEQ’s obligations under the Federal nondiscrimination statutes. In order to implement a properly functioning grievance procedure, the Nondiscrimination Compliance Coordinator must have adequate training on what constitutes discrimination and retaliation prohibited under the Federal nondiscrimination statutes and EPA’s implementing regulations; how the grievance procedures operate; how to gather relevant evidence and assess it in the Title VI context; the importance of a fair and impartial process; and the applicable legal standards.” [EPA Letter, p 27.]

MDEQ Response 11:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ’s Nondiscrimination Policy and grievance procedures should include reference to the training of MDEQ’s NCC or associated MDEQ staff. Of course MDEQ has and will engage proper training for all its employees associated with MDEQ’s Nondiscrimination Policy and grievance procedures. MDEQ also cites the materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ’s permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ’s response to EPA’s recommendations.

EPA Preliminary Finding 12:

“The MDEQ website shows no evidence of a public participation plan, including processes and procedures for assessing communities (including demographics, community concerns, history, and background), performing public outreach, determining locations where public meetings should take place, providing language assistance services, providing access services for disabled persons, and providing notification of the location of the information repository.” [EPA Letter, pp 27-28.]

MDEQ Response 12:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ’s Nondiscrimination Policy and grievance procedures should include “a public participation plan, including processes and procedures for assessing communities (including demographics, community concerns, history, and background), performing public outreach, determining locations where public meetings should take place, providing language assistance services, providing access services for disabled persons, and providing notification of the location of the information repository.” MDEQ also cites the materials supplied to EPA in

packages from MDEQ dated November 6, 2015, and March 14, 2016 that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ's permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 13:

"While reviewing the current public participation policies, guidance, and procedures for environmental programs provided by MDEQ, EPA could not find any information about how MDEQ will ensure that LEP persons will have meaningful access to MDEQ's public participation process MDEQ has not submitted any documentation suggesting that it has performed any analysis to assess the needs of the LEP population it serves on a statewide basis consistent with EPA's 2004 Guidance Moreover, EPA determined that MDEQ does not have any information on its website about its public participation process in languages other than English Also, there is no evidence that MDEQ adequately notifies LEP individuals of their right to an interpreter or the translation of all vital documents." [EPA Letter, p 28.]

MDEQ Response 13:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ's Nondiscrimination Policy and grievance procedures should include "information about how MDEQ will ensure that LEP persons will have meaningful access to MDEQ's public participation process."

It is correct that 40 C.F.R. § 7.95 states: "Where appropriate, such notice [of nondiscrimination] must be in a language or languages other than English." However, this rule applies only to the text of the notice of nondiscrimination and not to the entirety of MDEQ's Nondiscrimination Policy and grievance procedures. MDEQ also cites the materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ's permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ's response to EPA's recommendations.

EPA Preliminary Finding 14:

"There appears to be no well-defined process for ensuring that MDEQ's facilities and non-Agency facilities are physically accessible for persons with disabilities; or to provide, at no cost, auxiliary aids and services such as qualified interpreters for those who are deaf or hard of hearing. Notifications for access for persons with disabilities are not routinely inserted on public notice documents. The only disability notice that can

be readily found by the public is an ADA link at the bottom of the MDEQ website. This links to a State of Michigan site for employment and hiring.” [EPA Letter, p 28.]

MDEQ Response 14:

This preliminary finding is not valid and is incorrect because it alleges noncompliance with items not required under 40 C.F.R. Part 7. Specifically, nowhere under 40 C.F.R. Part 7 is there a requirement that the text of MDEQ’s Nondiscrimination Policy and grievance procedures should include a “well-defined process for ensuring that MDEQ’s facilities and non-Agency facilities are physically accessible for persons with disabilities; or to provide, at no cost, auxiliary aids and services such as qualified interpreters for those who are deaf or hard of hearing[; and address that n]otifications for access for persons with disabilities are [to be] routinely inserted on public notice documents.”

It is correct that 40 C.F.R. § 7.95 states: “A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, age, or handicap in a program or activity receiving EPA assistance or, in programs or activities covered by section 13, on the basis of sex.” However, this rule applies only to the text of the notice of nondiscrimination and not to the entirety of MDEQ’s Nondiscrimination Policy and grievance procedures. MDEQ also cites the materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, that are hereby being resupplied. In addition, other MDEQ policies and practices, including amendments to MDEQ’s permit issuance Public Comment and Public Hearing process, Nondiscrimination Policy 09-024, and Policy on Public Involvement 09-007, are discussed below in MDEQ’s response to EPA’s recommendations.

EPA Preliminary Finding 15:

“On December 3, 2015, EPA informed MDEQ that while MDEQ’s Nondiscrimination Policy and Procedure policy is a step forward, it alone is not sufficient to assure EPA that MDEQ will be able to meet its nondiscrimination obligations. Nor did the public participation guidance and procedures MDEQ provided address concerns found during the investigation.” [EPA Letter, p 28.]

MDEQ Response 15:

It is correct that EPA and MDEQ engaged in a conference call on December 3, 2015. It is not correct that during this call EPA informed MDEQ of EPA’s “concerns found during the investigation” with sufficient detail for MDEQ to prepare a formal response. It was not until MDEQ received the recent EPA Letter, dated January 19, 2017, that MDEQ was informed of EPA’s preliminary findings based on EPA’s investigation. Moreover, contemporaneous notes affirm that during an August 20, 2015, conference call, EPA stated it recognized MDEQ’s good record of nondiscrimination practices and activities commencing after the events addressed in the present matter (EPA File No.: 01R-94-R5); and in fact, Director Dorka stated that MDEQ was a “leader in this area” of nondiscrimination practices and activities, and that EPA would want to make MDEQ a “model” for such nondiscrimination practices and activities. Also, contemporaneous

notes of the December 3, 2015, conference call affirm that then-Director Golightly-Howell and Director Dorka both stated that MDEQ's "current procedures" regarding nondiscrimination were deficient only with respect to certain limited "gaps."

Contemporaneous notes affirm these claimed "gaps" in MDEQ's nondiscrimination practices included, as examples: "How to deal [with] requests for extensions, speak[ing] out of order, need for security."

EPA Preliminary Finding 16:

"Given the aforementioned 30 years of history, EPA is deeply concerned that MDEQ will not fulfill its responsibility to implement a fully functioning and meaningful non-discrimination program as required under EPA regulations." [EPA Letter, p 29.]

MDEQ Response 16:

This preliminary finding is not valid and is incorrect. MDEQ has supplied EPA with extensive supplemental information supporting MDEQ's historical and current compliance with 40 C.F.R. Part 7 and federal nondiscrimination law. The materials supplied to EPA in packages from MDEQ dated November 6, 2015 and March 14, 2016, are hereby being resupplied. Moreover, contemporaneous notes affirm that during an August 20, 2015, conference call, EPA stated it recognized MDEQ's good record of nondiscrimination practices and activities commencing after the events addressed in the present matter (EPA File No.: 01R-94-R5); and in fact, Director Dorka stated that MDEQ was a "leader in this area" of nondiscrimination practices and activities, and that EPA would want to make MDEQ a "model" for such nondiscrimination practices and activities. Also, contemporaneous notes of the December 3, 2015, conference call affirm that then-Director Golightly-Howell and Director Dorka both stated that MDEQ's "current procedures" regarding nondiscrimination were deficient only with respect to certain limited "gaps." Contemporaneous notes affirm these claimed "gaps" in MDEQ's nondiscrimination practices included, as examples: "How to deal [with] requests for extensions, speak[ing] out of order, need for security." Also, an MDEQ records review supports that EPA had never supplied notice that MDEQ was not in compliance with 40 CFR, Part 7.

II. MDEQ Responses to EPA Recommendations Regarding MDEQ's Nondiscrimination Program

EPA Recommendation 1:

"1. Develop and implement a policy that will require MDEQ to create and/or carry out each step listed below each time that MDEQ engages in a public participation or public involvement process:

- a. An overview of MDEQ's plan of action for addressing the community's needs and concerns;

March 6, 2017

- b. A description of the community (including demographics, history, and background);
- c. A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet;
- d. A detailed plan of action (outreach activities) Recipient will take to address concerns;
- e. A contingency plan for unexpected events;
- f. Location(s) where public meetings will be held (consider the availability and schedules of public transportation);
- g. Contact names for obtaining language assistance services for limited-English proficient persons, including, translation of documents and/or interpreters for meetings;
- h. Appropriate local media contacts (based on the culture and linguistic needs of the community); and
- i. Location of the information repository.” [EPA Letter, p 31.]

MDEQ Response 1:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ’s recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ’s current statutes, policies, and practices, including:

MCL 324.5511

Conflict of Interest and Ethical Standards Policy No. 01-007

Policy on Public Involvement No. 09-007

Department Policy and Procedure No. 09-013

Nondiscrimination Policy No. 09-024

Public Comment Procedures – August 2004

Michigan Civil Service Rule 2-8 – January 2016

A Citizen’s Guide to Participation – April 2007

MDEQ Public Involvement Handbook – January 2014

(Copies of above listed items are enclosed.)

EPA Recommendation 2:

“2. Develop factors to assist MDEQ employees in making decisions regarding the appropriate time, location, duration, and security at public meetings and guidance to ensure they are applied in a non-discriminatory manner.” [EPA Letter, p 31.]

MDEQ Response 2:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40

March 6, 2017

C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ's current statutes, policies, and practices, including:

MCL 324.5511

Conflict of Interest and Ethical Standards Policy No. 01-007

Policy on Public Involvement No. 09-007

Department Policy and Procedure No. 09-013

Nondiscrimination Policy No. 09-024

Public Comment Procedures – August 2004

Michigan Civil Service Rule 2-8 – January 2016

A Citizen's Guide to Participation – April 2007

MDEQ Public Involvement Handbook – January 2014

(Copies of above listed items are enclosed.)

EPA Recommendation 3:

"3. Establish and maintain an environmental complaint receiving and response system that clearly enables those complainants to submit environmental complaints, determine how the complaints are responded to by MDEQ, and review documents associated with the results of any MDEQ investigations regarding their complaints."
[EPA Letter, p 31.]

MDEQ Response 3:

MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

EPA Recommendation 4:

"4. Adopt a notice of nondiscrimination that contains at a minimum, the following statements:

- a. MDEQ does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.
- b. MDEQ is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of

March 6, 2017

the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

- c. If you have any questions about this notice or any of MDEQ's non-discrimination programs, policies or procedures, you may contact: DEQ Nondiscrimination Compliance Coordinator, Office of Environmental Assistance, Michigan Department of Environmental Quality, 525 West Allegan Street, P.O. Box 30457, Lansing, MI 48909-7957. Email: [XXXXXX]@michigan.gov; Phone Number: [XXX-XXX].
- d. If you believe that you have been discriminated against with respect to a MDEQ program or activity, you may contact the DEQ Nondiscrimination Compliance Coordinator identified above or visit our website at <http://www.michigan.gov/deq/> and click the link for Nondiscrimination Policy and Procedure to obtain a copy of the DEQ's procedures to file a complaint of discrimination." [EPA Letter, pp 31-32.]

MDEQ Response 4:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024.

EPA Recommendation 5:

"5. Prominently post the notice of non-discrimination on the MDEQ website, in general publications that are distributed to the public, and in MDEQ's offices or facilities. In order to ensure effective communication with the public, MDEQ will have its notice of non-discrimination made accessible to limited-English proficient individuals and individuals with disabilities." [EPA Letter, p 32.]

MDEQ Response 5:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

EPA Recommendation 6:

- "6. Adopt grievance procedures that will at a minimum address the following:
 - a. Who may file a complaint under the procedures;

- b. Which informal process(es) are available, and the options for complainants to bypass an informal process for a formal process at any point;
- c. That an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted;
- d. That the preponderance of the evidence standards will be applied during the analysis of the complaint;
- e. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if they occur;
- f. That complaints will be investigated in a prompt and appropriate manner;
- g. That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found, and a description of the investigation process. (Whether complaint investigations and resolutions to be "prompt" will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.)" [EPA Letter, p 32-33.]

MDEQ Response 6:

MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024.

EPA Recommendation 7:

"7. Widely publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and do so on a continual basis, to allow for prompt and appropriate handling of those discrimination complaints." [EPA Letter, p 33.]

MDEQ Response 7:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

EPA Recommendation 8:

“8. Ensure that it has designated at least one Non-Discrimination Coordinator [NCC] to ensure MDEQ’s compliance with Title VI, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).” [EPA Letter, p 33.]

MDEQ Response 8:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ’s recently amended Nondiscrimination Policy 09-024 (including to specifically name the person that is MDEQ’s NCC) and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ’s current statutes, policies, and practices, including:

MCL 324.5511

Conflict of Interest and Ethical Standards Policy No. 01-007

Policy on Public Involvement No. 09-007

Department Policy and Procedure No. 09-013

Nondiscrimination Policy No. 09-024

Public Comment Procedures – August 2004

Michigan Civil Service Rule 2-8 – January 2016

A Citizen’s Guide to Participation – April 2007

MDEQ Public Involvement Handbook – January 2014

(Copies of above listed items are enclosed.)

EPA Recommendation 9:

“9. Ensure that it has widely published in print and on-line, and will do so on a continual basis, the title of the Non-Discrimination Coordinator, email address, telephone contact information, and duties of the Non-Discrimination Coordinator.” [EPA Letter, p 33.]

MDEQ Response 9:

MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ’s current nondiscrimination policies and practices and adoption and administration of MDEQ’s recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

EPA Recommendation 10:

“10. Ensure that the Non-Discrimination Coordinator’s responsibilities include the following:

- a. Provide information to individuals regarding their right to services, aids, benefits, and participation in any MDEQ program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination, as well as notice of MDEQ’s formal and informal grievance processes and the ability to file a discrimination complaint with MDEQ.
- b. Establish grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with MDEQ under federal non-discrimination statutes are processed promptly and appropriately. One element of any policy and procedure or mechanism must include MDEQ providing meaningful access for limited-English proficient individuals and individuals with disabilities to MDEQ programs and activities.
- c. Ensure the tracking of all discrimination complaints filed with MDEQ under federal non-discrimination statutes including any patterns or systemic problems.
- d. Conduct a semiannual review of all formal and informal discrimination complaints filed with the MDEQ Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by MDEQ in order to identify and address any patterns or systemic problems.
- e. Inform and advise MDEQ staff regarding the MDEQ’s obligations to comply with federal non-discrimination statutes and serve as a resource on such issues.
- f. Ensure that complainants are updated on the progress of their discrimination complaints filed with MDEQ under federal non-discrimination statutes and are promptly informed as to any determinations made.
- g. Annually assess the efficacy of MDEQ’s efforts to maintain compliance with federal non-discrimination statutes.
- h. Ensure appropriate training in Alternative Dispute Resolution for persons involved in informal resolution of discrimination complaints filed under federal non-discrimination statutes.
- i. Provide or procure appropriate services to ensure MDEQ employees are appropriately trained on MDEQ non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.” [EPA Letter, pp 33-34.]

MDEQ Response 10:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of

MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ's current nondiscrimination policies and practices, including:

MCL 324.5511
Conflict of Interest and Ethical Standards Policy No. 01-007
Policy on Public Involvement No. 09-007
Department Policy and Procedure No. 09-013
Nondiscrimination Policy No. 09-024
Public Comment Procedures – August 2004
Michigan Civil Service Rule 2-8 – January 2016
A Citizen's Guide to Participation – April 2007
MDEQ Public Involvement Handbook – January 2014
(Copies of above listed items are enclosed.)

EPA Recommendation 11:

"11. Ensure that the Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (e.g., serving as the Non-Discrimination Coordinator as well MDEQ legal advisor or representative on civil rights issues)." [EPA Letter, p 34.]

MDEQ Response 11:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ's current nondiscrimination policies and practices, including:

MCL 324.5511
Conflict of Interest and Ethical Standards Policy No. 01-007
Policy on Public Involvement No. 09-007
Department Policy and Procedure No. 09-013
Nondiscrimination Policy No. 09-024
Public Comment Procedures – August 2004
Michigan Civil Service Rule 2-8 – January 2016
A Citizen's Guide to Participation – April 2007
MDEQ Public Involvement Handbook – January 2014
(Copies of above listed items are enclosed.)

EPA Recommendation 12:

"12. Ensure its public involvement process is available to all persons regardless of race, color, national origin (including limited-English proficiency), age, disability, and sex." [EPA Letter, p 34.]

MDEQ Response 12:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ's current nondiscrimination policies and practices, including:

MCL 324.5511

Conflict of Interest and Ethical Standards Policy No. 01-007

Policy on Public Involvement No. 09-007

Department Policy and Procedure No. 09-013

Nondiscrimination Policy No. 09-024

Public Comment Procedures – August 2004

Michigan Civil Service Rule 2-8 – January 2016

A Citizen's Guide to Participation – April 2007

MDEQ Public Involvement Handbook – January 2014

(Copies of above listed items are enclosed.)

EPA Recommendation 13:

"13. Conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and <http://www.lep.gov> to determine what language services it may need to provide to ensure that limited-English proficient individuals can meaningfully participate in the process. MDEQ should develop a language access plan consistent with the details found in EPA's training module for LEP. <http://www.epa.gov/civilrights/lepaccess.htm>." [EPA Letter, p 34.]

MDEQ Response 13:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

EPA Recommendation 14:

"14. Develop, publish, and implement written procedures to ensure meaningful access to all MDEQ programs and activities by all persons, including access by limited-English proficient individuals and individuals with disabilities." [EPA Letter, p 34.]

MDEQ Response 14:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

EPA Recommendation 15:

"15. Provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services provided by MDEQ in a timely manner and in such a way as to protect the privacy and independence of the individual." [EPA Letter, p 34.]

MDEQ Response 15:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

EPA Recommendation 16:

"16. Ensure that all appropriate MDEQ staff have been trained on its internal non-discrimination policies and procedures and on federal non-discrimination obligations." [EPA Letter, p 34.]

MDEQ Response 16:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft

Policy on Public Involvement 09-007, and continuation of MDEQ's current nondiscrimination policies and practices, including:

MCL 324.5511
Conflict of Interest and Ethical Standards Policy No. 01-007
Policy on Public Involvement No. 09-007
Department Policy and Procedure No. 09-013
Nondiscrimination Policy No. 09-024
Public Comment Procedures – August 2004
Michigan Civil Service Rule 2-8 – January 2016
A Citizen's Guide to Participation – April 2007
MDEQ Public Involvement Handbook – January 2014
(Copies of above listed items are enclosed.)

EPA Recommendation 17:

"17. Have a plan in place to ensure that such training is a routine part of the on-boarding process for new employees." [EPA Letter, p 34.]

MDEQ Response 17:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ's current nondiscrimination policies and practices, including:

MCL 324.5511
Conflict of Interest and Ethical Standards Policy No. 01-007
Policy on Public Involvement No. 09-007
Department Policy and Procedure No. 09-013
Nondiscrimination Policy No. 09-024
Public Comment Procedures – August 2004
Michigan Civil Service Rule 2-8 – January 2016
A Citizen's Guide to Participation – April 2007
MDEQ Public Involvement Handbook – January 2014
(Copies of above listed items are enclosed.)

III. EPA Recommendations “to address continuing community concerns” at the Genesee Power Station

EPA Recommendation 18:

“1. Continue any current investigations and investigate any community concerns (including those concerns brought to MDEQ's attention by EPA) or complaints hereafter expressed regarding odor, fugitive dust, lead, or other impacts from the GPS facility.” [EPA Letter, p 35.]

MDEQ Response 18:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Enforcement of all requirements under the subject permit issued to the GPS facility (Permit No.: MI-ROP-N3570-2012). Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

Recommendation 19:

“2. Consider its Title VI obligations, the findings of the investigations conducted pursuant [to] the recommendation immediately above, and the concerns expressed by the communities near the GPS facility during any future permit renewal or permit modifications for the facility and document such consideration.” [EPA Letter, p 35.]

MDEQ Response 19:

Certain elements of this EPA recommendation are not valid because they address items not required under 40 C.F.R. Part 7. MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Enforcement of all requirements under the subject permit issued to the GPS facility (Permit No.: MI-ROP-N3570-2012). Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007, and continuation of MDEQ's current statutes, policies, and practices, including:

MCL 324.5511

Conflict of Interest and Ethical Standards Policy No. 01-007

Policy on Public Involvement No. 09-007

Department Policy and Procedure No. 09-013

Nondiscrimination Policy No. 09-024

Public Comment Procedures – August 2004

Michigan Civil Service Rule 2-8 – January 2016

A Citizen's Guide to Participation – April 2007

Lillian S. Dorka, Director
Page 24
March 6, 2017

MDEQ Public Involvement Handbook – January 2014
(Copies of above listed items are enclosed.)

Recommendation 20:

“3. Ensure that it has in place an environmental complaint receiving and response system that clearly enables those complainants wishing to raise environmental concerns regarding the GPS Facility to submit environmental complaints, determine how the complaints are responded to by MDEQ, and review documents associated with the results of any MDEQ investigations regarding their complaints.” [EPA Letter, p 35.]

MDEQ Response 20:

MDEQ may achieve compliance with the 40 C.F.R. Part 7 requirements targeted by this EPA recommendation through the following steps (rather than those steps recommended by EPA): Continuation of MDEQ's current nondiscrimination policies and practices and adoption and implementation of MDEQ's recently amended Nondiscrimination Policy 09-024 and recently amended draft Policy on Public Involvement 09-007 (copies enclosed).

Sincerely,



C. Heidi Grether
Director

Michigan Department of Environmental Quality

Enclosures

cc: Barb Schaibly
Nondiscrimination Compliance Coordinator
Supervisor, Legal Services Section
Michigan Department of Environmental Quality
Maggie Pallone
Deputy Director, External Relations
Michigan Department of Environmental Quality
John Fordell Leone
Assistant Attorney General
Michigan Department of Attorney General
Elise B. Pickard
Associate General Counsel for Civil Rights and Finance
Cheryl Newton
Acting Deputy Civil Rights Official, U.S. EPA Region 5



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GREETHER
DIRECTOR

Below is the complete list of enclosures submitted with the letter from MDEQ Director Grether to ECRCO Director Dorka, dated March 6, 2017:

1. MCL 324.5511
2. Conflict of Interest and Ethical Standards Policy No. 01-007
3. Policy on Public Involvement No. 09-007 (Draft: March 2017)
4. Department Policy and Procedure No. 09-013
5. Nondiscrimination Policy No. 09-024 (w/Grievance Submission Form) (Draft: March 2017)
6. Public Comment Procedures – August 2004
7. Michigan Civil Service Rule 2-8 – January 2016
8. A Citizen's Guide to Participation – April 2007
9. MDEQ Public Involvement Handbook – January 2014
10. DEQ package to EPA – November 6, 2015
11. DEQ package to EPA – March 14, 2016.